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7 Attorneys for plaintiff  
8 Altinex, Inc.

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10  
11 UNITED STATES DISTRICT COURT  
12  
13 CENTRAL DISTRICT OF CALIFORNIA  
14

15 ALTINEX, INC., Case No. SACV 10-00413 RNB  
16 Plaintiff, COMPLAINT  
17 vs. DECLARATORY JUDGMENT  
18

19 SHOWTIME NETWORKS, INC.  
20 and DOES 1 through 10,  
inclusive,

21 Defendants.  
22  
23 \_\_\_\_\_ /  
24 Plaintiff, Altinex, Inc., alleges:

25 **PARTIES**  
26  
27 1. Plaintiff Altinex, Inc. ("Altinex") does not  
28 know the true names of defendants DOES 1 through 10,

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1 inclusive. Therefore, Altinex sues said defendants by  
2 such fictitious names. Each of the defendants designated  
3 herein as DOE has an actual controversy that Altinex  
4 desires the Court to adjudicate in this action. Altinex  
5 will amend this complaint to show their names when they  
6 have been ascertained.  
7

8 2. Altinex is a California corporation with a  
9 principal place of business in Brea, California.  
10

11 Altinex is a manufacturer of electronic equipment used  
12 in professional audio visual presentation systems.  
13

14 3. Altinex does not manufacture or market any  
15 consumer products, nor does Altinex sell or market any  
16 products to consumers.  
17

18 4. Altinex' products are sold by way of a network  
19 of authorized dealers to school districts, the military,  
20 the government, large corporations and other  
21 institutional purchasers.  
22

23 5. Showtime Networks, Inc. ("Showtime Networks")  
24 is a Delaware Corporation headquartered in New York, New  
25 York. Showtime Networks and its parent company CBS  
26

1 produce and distribute television programming via cable  
2 and satellite.

3  
4 6. Neither Showtime Networks nor CBS make or  
5 market any hardware, and most certainly they do not make  
6 or market electronic equipment used in professional  
7 audio visual presentation systems.  
8  
9

10 **JURISDICTION AND VENUE**

11 7. This is an action for declaratory judgment  
12 under the Federal Declaratory Judgment Act, 28 U.S.C. §§  
13 2201 and 2202.  
14  
15

16 8. This Court has subject matter jurisdiction  
17 pursuant to 15 U.S.C. § 1125, and 28 U.S.C. §§ 1331 and  
18 1338, together with related claims under California  
19 state law.  
20  
21

22 9. Venue is proper in this judicial district under  
23 28 U.S.C. § 1391 in that Showtime Networks claims that  
24 Altinex' products infringing upon its trademarks are  
25 sold in this district.  
26  
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1  
2                   **FACTS**  
3

4                 10. Altinex manufactures and sells an audio visual  
5 presentation system under the mark "Showtime", said  
6 system comprising of electronic interconnecters,  
7 scalers, switchers, matrix switchers, transmitters and  
8 receivers for transmission over twisted pair cables.  
9

10                11. On February 13, 2010, Altinex has filed a  
11 trademark application in Class 009 for the mark  
12 "SHOWTIME" for "Electronic interconnecters for audio  
13 and video signals; Electronic scalers for audio and  
14 video signals; Electronic switchers for audio and video  
15 signals; Matrix switchers for audio and video signals;  
16 Transmitters and receivers for audio and video signals  
17 for transmission over twisted pair cables", application  
18 Serial Number 77935229.  
19

20                12. In a letter dated March 31, 2010, Mallory  
21 Levitt, counsel for CBS and acting on behalf of  
22 Showtime Networks, accused Altinex of trademark  
23 infringement of Showtime Networks' trademarks in  
24 Classes 9, 38 and 41, as well as trademark dilution and  
25  
26  
27  
28

1 unfair competition. Said letter demanded that Altinex  
2 "cease all use and proposed use of the SHOWTIME mark or  
3 any confusingly similar mark and withdraw Altinex  
4 application and provide proof thereof". Altinex was  
5 given 10 days to reply.

6  
7 13. A telephone conversation between Altinex  
8 President Jack Gershfeld and CBS counsel Mallory Levitt  
9 on April 1, 2010 left no doubt that nothing short of  
10 ceasing the use of the mark SHOWTIME will satisfy  
11 Showtime Networks and that a trademark infringement  
12 lawsuit by Showtime Networks against Altinex would  
13 follow Altinex' refusal to submit to Showtime Networks'  
14 demands. The only concession Showtime Networks was  
15 willing to give Altinex was to extend the "phase-out"  
16 period for Altinex to cease the use of its SHOWTIME  
17 mark.  
18  
19

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**COUNT 1, DECLARATORY JUDGMENT**

24  
25 14. Altinex incorporates by reference paragraphs 1  
26 - 13.

27  
28 15. Showtime Networks owns trademarks in Classes

1           009, 038 and 041 for "SHOWTIME" and variations thereof  
2           for entertainment, broadcast and telecommunications  
3           services and the like, namely, trademarks registration  
4           numbers 1267743, 2631934, 3342145, 2593033, 2580327,  
5           256259, 2572210, 2562061, 2670286, 3330602, 2840240,  
6           2846343, 2778624, 2673253, 3544958, 3577423, 3517210,  
7           2691504, 2667869, 2321502, 2483680, 2407278, 2283955,  
8           2547571, 2180434, 1075211.  
9  
10

11           16. Altinex has a reasonable apprehension of being  
12           a defendant in a trademark infringement lawsuit brought  
13           by Showtime Networks alleging that Altinex' use of its  
14           mark "Showtime" infringes the trademarks registration  
15           numbers 1267743, 2631934, 3342145, 2593033, 2580327,  
16           256259, 2572210, 2562061, 2670286, 3330602, 2840240,  
17           2846343, 2778624, 2673253, 3544958, 3577423, 3517210,  
18           2691504, 2667869, 2321502, 2483680, 2407278, 2283955,  
19           2547571, 2180434, 1075211.  
20  
21

22           17. An actual case and controversy exists between  
23           the parties that may be adjudicated by this Court.  
24  
25

26           18. Altinex seeks declaratory judgment that  
27  
28

1 Altinex' use of the mark "Showtime" for electronic  
2 interconnecters, scalers, switchers, matrix switchers,  
3 transmitters and receivers for transmission over  
4 twisted pair cables does not infringe on the trademarks  
5 registration numbers 1267743, 2631934, 3342145,  
6 2593033, 2580327, 256259, 2572210, 2562061, 2670286,  
7 3330602, 2840240, 2846343, 2778624, 2673253, 3544958,  
8 3577423, 3517210, 2691504, 2667869, 2321502, 2483680,  
9 2407278, 2283955, 2547571, 2180434, 1075211.

14 **COUNT 2, DECLARATORY JUDGMENT**

15 19. Altinex incorporates by reference paragraphs 1  
16 - 18.

18 20. Altinex has a reasonable apprehension of being  
19 a defendant in a lawsuit brought by Showtime Networks  
20 alleging that Altinex' use of its mark "Showtime"  
21 constitutes dilution of the trademarks registration  
22 numbers 1267743, 2631934, 3342145, 2593033, 2580327,  
23 256259, 2572210, 2562061, 2670286, 3330602, 2840240,  
24 2846343, 2778624, 2673253, 3544958, 3577423, 3517210,  
25 2691504, 2667869, 2321502, 2483680, 2407278, 2283955,

1           2547571, 2180434, 1075211.  
2

3           21. An actual case and controversy exists between  
4 the parties that may be adjudicated by this Court.  
5

6           22. Altinex seeks declaratory judgment that  
7 Altinex' use of the mark "Showtime" for electronic  
8 interconnecters, scalers, switchers, matrix switchers,  
9 transmitters and receivers for transmission over  
10 twisted pair cables does not constitute dilution of the  
11 trademarks registration numbers 1267743, 2631934,  
12 3342145, 2593033, 2580327, 256259, 2572210, 2562061,  
13 2670286, 3330602, 2840240, 2846343, 2778624, 2673253,  
14 3544958, 3577423, 3517210, 2691504, 2667869, 2321502,  
15 2483680, 2407278, 2283955, 2547571, 2180434, 1075211.  
16

20           **COUNT 3, DECLARATORY JUDGMENT**

21           23. Altinex incorporates by reference paragraphs 1  
22 - 18.  
23

24           24. Altinex has a reasonable apprehension of being  
25 a defendant in a lawsuit brought by Showtime Networks  
26 alleging that Altinex' use of its mark "Showtime"  
27

28           constitutes unfair competition in violation of § 17200

et seq. of California *Business and Professions Code*.

25. An actual case and controversy exists between  
the parties that may be adjudicated by this Court.

26. Altinex seeks declaratory judgment that  
Altinex' use of the mark "Showtime" for electronic  
interconnecters, scalers, switchers, matrix switchers,  
transmitters and receivers for transmission over  
twisted pair cables does not constitute unfair  
competition in violation of § 17200 et seq. of  
*California Business and Professions Code*.

WHEREFORE, plaintiff Altinex, Inc. requests  
declaratory judgment against defendants Showtime  
Networks, Inc. and DOES 1 through 10, inclusive, as  
follows:

1. That Altinex' use of the mark "Showtime" for  
electronic interconnecters, scalers, switchers, matrix  
switchers, transmitters and receivers for transmission  
over twisted pair cables does not infringe on the  
trademarks registration numbers 1267743, 2631934,

3342145, 2593033, 2580327, 256259, 2572210, 2562061,

1           2670286, 3330602, 2840240, 2846343, 2778624, 2673253,  
2           3544958, 3577423, 3517210, 2691504, 2667869, 2321502,  
3           2483680, 2407278, 2283955, 2547571, 2180434, 1075211.  
4  
5

6       2. That Altinex' use of the mark "Showtime" for  
7       electronic interconnecters, scalers, switchers, matrix  
8       switchers, transmitters and receivers for transmission  
9       over twisted pair cables does not constitute dilution  
10      of the trademarks registration numbers 1267743,  
11      2631934, 3342145, 2593033, 2580327, 256259, 2572210,  
12      2562061, 2670286, 3330602, 2840240, 2846343, 2778624,  
13      2673253, 3544958, 3577423, 3517210, 2691504,  
14      2667869, 2321502, 2483680, 2407278, 2283955, 2547571,  
15      2180434, 1075211.  
16  
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18       3. That Altinex' use of the mark "Showtime" for  
19       electronic interconnecters, scalers, switchers, matrix  
20       switchers, transmitters and receivers for transmission  
21       over twisted pair cables does not constitute unfair  
22       competition in violation of § 17200 *et seq.* of  
23  
24  
25  
26  
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California *Business and Professions Code.*

1  
2 4. Altinex, Inc. further requests judgment for costs  
3 of this lawsuit, attorneys' fees and such other relief  
4 as this Court deems just and proper.  
5

6 DATED: April 5, 2010

Khiterer Law Office

*Vladimir Khiterer*

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9 Vladimir Khiterer  
10 Attorneys for plaintiff  
11 Altinex, Inc.

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I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/> ) ALTINEX, INC.		DEFENDANTS SHOWTIME NETWORKS, INC. and DOES 1 through 10, inclusive			
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)  Khiterer Law Office 2901 W. Coast Hwy., Suite 200, Newport Beach, CA 92662 (949) 631-6161		Attorneys (If Known)			
II. BASIS OF JURISDICTION (Place an X in one box only.)		III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)			
<input type="checkbox"/> 1 U.S. Government Plaintiff	<input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)	Citizen of This State	<b>PTF DEF</b> <input type="checkbox"/> 1 <input type="checkbox"/> 1 Incorporated or Principal Place of Business in this State	<b>PTF DEF</b> <input type="checkbox"/> 4 <input type="checkbox"/> 4	
<input type="checkbox"/> 2 U.S. Government Defendant	<input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State	<input type="checkbox"/> 2 <input type="checkbox"/> 2 Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5 <input type="checkbox"/> 5	
		Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3 <input type="checkbox"/> 3 Foreign Nation	<input type="checkbox"/> 6 <input type="checkbox"/> 6	
IV. ORIGIN (Place an X in one box only.)					
<input checked="" type="checkbox"/> 1 Original Proceeding		<input type="checkbox"/> 2 Removed from State Court		<input type="checkbox"/> 3 Remanded from Appellate Court	
<input type="checkbox"/> 4 Reinstated or Reopened		<input type="checkbox"/> 5 Transferred from another district (specify):		<input type="checkbox"/> 6 Multi-District Litigation	
<input checked="" type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge					
V. REQUESTED IN COMPLAINT: JURY DEMAND: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (Check 'Yes' only if demanded in complaint.)		<input type="checkbox"/> MONEY DEMANDED IN COMPLAINT: \$ _____			
VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) 15 U.S.C. § 1125, plaintiff seeks declaratory judgment that it is not infringing on defendant's trademarks					
VII. NATURE OF SUIT (Place an X in one box only.)					
OTHER STATUTES	CONTRACT	TORTS	TORTS	PRISONER	LABOR
<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<input type="checkbox"/> PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability <input type="checkbox"/> BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 424 Civil Rights <input type="checkbox"/> 425 Prison Condition <input type="checkbox"/> FORFEITURE / PENALTY <input type="checkbox"/> 430 Agriculture <input type="checkbox"/> 432 Other Food & Drug <input type="checkbox"/> 435 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 440 R.R. & Truck <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 447 Welfare <input type="checkbox"/> 448 Asbestos Personal Injury Product Liability <input type="checkbox"/> IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/ Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> FORFEITURE / PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <input type="checkbox"/> PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input checked="" type="checkbox"/> 840 Trademark <input type="checkbox"/> SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIW <input type="checkbox"/> (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <input type="checkbox"/> FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

FOR OFFICE USE ONLY: Case Number: **SACV 10-00413 RNB**

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed?  No  Yes  
 If yes, list case number(s): \_\_\_\_\_

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case?  No  Yes  
 If yes, list case number(s): \_\_\_\_\_

**Civil cases are deemed related if a previously filed case and the present case:**

- (Check all boxes that apply)  A. Arise from the same or closely related transactions, happenings, or events; or  
 B. Call for determination of the same or substantially related or similar questions of law and fact; or  
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or  
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.  
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District: <sup>*</sup>	California County outside of this District; State, if other than California; or Foreign Country
Orange County, California	N/A

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.  
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

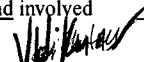
County in this District: <sup>*</sup>	California County outside of this District; State, if other than California; or Foreign Country
N/A	New York

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.  
**Note: In land condemnation cases, use the location of the tract of land involved.**

County in this District: <sup>*</sup>	California County outside of this District; State, if other than California; or Foreign Country
Orange County, California	

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date April 5, 2010

**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

Name & Address:  
 Vladimir Khiterer (California Bar No. 177007)  
 Khiterer Law Office  
 2901 W. Coast Hwy., Suite 200  
 Newport Beach, CA 92663

**UNITED STATES DISTRICT COURT**  
**CENTRAL DISTRICT OF CALIFORNIA**

ALTINEX, INC.	CASE NUMBER
PLAINTIFF(S)	<b>SACV 10-00413 RNB</b>
v.  SHOWTIME NETWORKS, INC. and DOES 1 through 10, inclusive	<b>SUMMONS</b>

DEFENDANT(S).

TO: DEFENDANT(S): SHOWTIME NETWORKS, INC.

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached  complaint  amended complaint  counterclaim  cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Vladimir Khiterer, whose address is Khiterer Law Office, 2901 W. Coast Hwy., Suite 200, Newport Beach, CA 92663. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: APR - 6 2010

By: \_\_\_\_\_



*[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3).]*